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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
	)	
Petition for Expedited	)	CC Docket No. 98-5
Declaratory Ruling	)	

OPPOSITION OF AMERITECH

John T. Lenahan
Larry A. Peck
Counsel for Ameritech
Room 4H86
2000 West Ameritech Center Drive
Hoffman Estates, IL 60196-1025

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INTRODUCTION AND SUMMARY

LCI proposes an extreme form of structural separation between Bell Operating Company ("BOC") retail and wholesale operations. LCI claims that its proposal can expedite residential local competition by new entrants under Section 251, and long distance entry by the BOCs under Section 271 of the Telecommunication Act of 1996 ("the Act"). The opposite is true. LCI's petition is also inconsistent with the Act and the Commission's policy, and should be denied.

The thrust of LCI's Petition is that the Act's promise of local competition has not been realized. According to LCI, three principal barriers to local competition lie at the heart of the problem: (i) operations support systems ("OSS"); (ii) availability of network element combinations, and (iii) resale pricing. According to LCI, those problems share a common thread in that they have become more complex because of the "conflict of interest" between a BOC's dual role as both network supplier and service provider. Any incentive that the BOC has to sell use of its local facilities network to competitive local exchange carriers ("CLECs") – LCI speculates -- is counteracted by the possibility that, by doing so, the BOC's retail operations may lose customers.

To reduce this alleged conflicts, LCI proposes a corporate structure that would fully separate BOC retail and wholesale activities into independent subsidiaries, one of which – ServeCo – would have 40% or more public ownership and independent management. Retail activities, including both local and toll, would be exclusively housed in "ServeCo," while the BOC's existing network facilities would be owned by the wholesale affiliate known as "NetCo." NetCo would initially serve all the BOCs retail customers, but its services would be frozen and over time all its retail customers would migrate to other providers, either voluntarily or eventually through balloting, at which point, NetCo would not provide any retail services. ServeCo would interact with NetCo in exactly the same manner as an unaffiliated CLEC. As outlined in LCI's Petition, in exchange for adopting this corporate structure, the BOC would be entitled to a rebuttable presumption that it has met the requirements of the Section 271 competitive checklist and the Section 271 public interest test.

The Commission should deny LCI's request. First, LCI's proposal violates the Act in a number of ways. Structural separation at the local level, as proposed by LCI, is clearly inconsistent with the Act. Local structural separation is not a condition for BOC long distance entry or operation under either Section 271 or Section 272 of the Act; nor is it a local interconnection duty imposed under Section 251 of the Act. LCI's plan also violates Section 251(c) of the Act. The Commission cannot require BOCs to provide pre-existing combinations of network elements, the so-called network platform, or revise wholesale pricing as LCI demands.

Second, even assuming argunendo that the Commission had the legal authority to approve LCI's proposal (which it does not) the Commission should not, because the plan is a poor public policy choice. As an initial matter, the proposal is not financially viable, and if required, would be confiscatory for the BOC's operations. In addition , if implemented, LCI's proposal will produce operational and economic inefficiency. The Commission has repeatedly rejected or relaxed structural separation requirements over the past 10 years in favor of more efficient non-structural safeguards. As this experience proves, the costs of structural separation exceed its benefits. Consistent with this past precedent, the result of LCI's proposal will be increased costs and inefficient competition. This will degrade service for both retail and wholesale users of the BOCs' networks, including higher costs, declining network investment, lower service quality, diminished innovation and customer confusion.

Finally, apart from its legal and policy defects, the proposal itself is seriously flawed because it will not resolve the concerns identified by LCI. With respect to long distance entry, this is not a "fast track." Adoption of the plan cannot accelerate BOC long distance entry, it will in fact delay it for a minimum of two to four additional years. With respect to local entry, the plan will not improve LCI's ability to utilize operations support systems ("OSS"), nor can it develop the OSS standards that LCI seeks.

The bottom line is this: adoption of LCI's petition will serve no constructive policy, business or economic purpose. The proposal is yet another clever ploy by an interexchange carrier to further complicate and delay BOC long distance competition. As such, LCI's plan is not a "fast track," it is "off track" and a dead end.

I. LCI IS WRONG, LOCAL COMPETITION IS EMERGING UNDER THE ACT.

As an initial matter, LCI's proposal is based on false assumptions. It is premature to declare the Act a "failure" – at least with regard to local competition. In any event, neither LCI nor the Commission have the authority to "redesign" the Act as LCI seeks to do. Additionally, LCI's preoccupation with hypothetical corporate "incentives", speculative "damages" and speculative "remedies" is beside the point. Put simply, the requirements of Section 251and Section 271 are not options, they are mandatory. Any potential "conflict of interest" or speculative "danger" is clearly resolved through compliance with Act, and enforcement, when appropriate.[1]

The facts belie LCI's concerns. Since the enactment of the Act, the States and the Commission have worked aggressively towards at least one of the goals stated in the 1996 Act's preamble: the development of competitive local markets. Despite the gloomy pronouncements from LCI, significant steps have been taken towards this goal. According to NARUC's 1997 report, Telecommunications Competition 1997:

- Over 1,100 new competitors have been certified by state commissions.
- Over 2,400 interconnection agreements have been approved by state commissions.
- Over 180 arbitrations on interconnection agreements have been completed.

Likewise, according to a fact sheet recently issued by this Commission:[2]

- CLECs tripled their customer lines in 1997 to about 1.5 million at the end of the year.
- CLECs now account for about 2.6% of all local telephone revenues.
- The ten largest CLECs have switches in 132 cities in 33 states, nearly all of which have been installed since the Act was passed.

[1] As Commissioner Powell recently suggested, the Commission should shift from prospective regulation to enforcement: "Rather than imagining all the dangers that might result if we let a company do what it has asked and then take equally speculative action to meet those speculative dangers, let's instead police conduct and make decisions based on real facts. If there are "teeth" in our enforcement efforts, companies will take heed or pay the price." Commissioner Michael K. Powell, speech before Legg Mason Investor Work Shop, March 13, 1998, "Technology and Regulation" at p.6.

[2] See "Fact Sheet" issued in connection with Chairman Kennard's January 20, 1998 Press Conference about the Second Anniversary of the Telecommunications Act of 1996 at [http;//www.fcc.gov/headarch/htm1].

Although this entry may not be as fast as LCI would like, it demonstrates that the local markets can be and, in fact, are open to competition. Indeed, based on these market facts, Commissioner Butler provided the Senate Judiciary Subcommittee on Antitrust the following assessment:

> The relatively slow onset of competition is not surprising. The history of the long distance market provides a useful example. There over 20 years after the first competitive service was authorized, the incumbent AT&T still has approximately half the market. While we are far from where we want to be in the development of competitive local markets, there are encouraging signs that local competition is beginning to take root across the country.
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> * * *
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> Again, let me put that in perspective, based on one company's experience in just one state (Ohio). One competitor in Ohio, which is providing services through its own facilities, has already sold 17,000 access lines – and has invested $50 million in infrastructure in Ohio alone. This is a company, by the way, that was only incorporated in 1994 and has only been authorized to do business in Ohio since May of last year. In less than one year, it has become the tenth largest provider of local telephone service in the state, compared to the 43 incumbents that have been here historically.[3]

This example from Ohio is typical of the entire Ameritech region. For example, there are over 101,000 interconnection trunks between Ameritech and competitors for the exchange of traffic. Ameritech is currently providing over 78,000 unbundled loops to competitors as well as approximately 560,000 resold lines.

Moreover, to the extent there is a slower rate of growth for some residential and facilities-based competition under the Act, the root cause is underlying pricing anomalies in LEC residential and wholesale rates that result from past and recent state regulatory decisions. In a nut shell, residential rates and rates for unbunlded network elements ("UNEs") are so low that there is no incentive or ability for competitors install facilities to compete against them. The solution to this problem is <u>not</u> a corporate divestiture as suggested by LCI, but rather is economically sound wholesale pricing and rational retail rate rebalancing by state commissions.

Given the fact that the local market has been opened, it is now time to implement the other major goal of the Act – long distance entry by the BOCs. LCI's proposal, however, will complicate and delay the current Section 271 process. In fact, as demonstrated below, Ameritech estimates that LCI's so-called "fast track" will delay Section 271 relief by at least two to four additional years.

Earlier this month, Chairman Kennard, Assistant Attorney General Joel Klein, and Commissioner Jolynn Barry Butler of the Public Utilities Commission of Ohio ("PUCO") urged the Senate Judiciary Committee Antitrust Subcommittee to "stay the course" regarding the procedures Congress established for RBOC long distance entry in the 1996 Act. As Commissioner Butler testified before the Committee:

> we're so far down the road. . . that I can't think that switching courses at this point will get us where we want to go any faster.

Ameritech agrees.[4] Now, the final step is to implement Section 271 of the Act, as enacted and finally bring the benefits of further long distance competition promised by the Act to consumers.

In short, it is premature to declare the 1996 Act a "failure." Now is the time to implement Section 271 -- not rewrite it, as LCI proposes.

II. THE LCI PLAN IS INCONSISTENT WITH THE ACT AND ESTABLISHED COMMISSION POLICIES FAVORING EFFICIENT COMPETITION.

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[3] Testimony of Commissioner Lynn Butler, Public Utilities of Ohio, before the Subcommittee on Antitrust, Business Rights, and Competition Senate Committee on the Judiciary on "The Telecommunications Act of 1996; Moving Toward Competition Under Section 271," Wednesday, March 4, 1998.

[4] Notwithstanding, Ameritech is frustrated with the current Section 271 process, as are others. For example, Senator McCain has recently introduced legislation that "removes the current perverse incentives that some parties have to use the regulatory process to delay BOC entry into long distance. "See Congressional Record - Senate, March 16, 1998 at S1994 to 1995, and S. 1766 "The Telecommunications Competition Act of 1998".

The LCI plan cannot be required because the plan is flatly inconsistent with the Act. Moreover, the plan is contrary to the Commission's recent decisions that correctly and consistently reject structural separation in favor of equally as effective and far more efficient non-structural accounting and competitive safeguards. For these reasons it should be rejected.

A. The LCI Petition Is Inconsistent With The Act And Cannot Be Imposed By The Commission.

LCI itself admits that its proposal goes beyond the requirements of the Act.[5] Ameritech agrees. LCI's plan not only conflicts with the deregulatory intent of the Act, it is fundamentally inconsistent with Sections 251, 271, and 272 of the Act. The structural separation proposed by LCI conflicts with the safeguards in Sections 251, 271, and 272 of the Act, and LCI's attempt to indirectly mandate that BOCs combination of network elements and deeper resale discounts exceeds the Commission's authority under Sections 251(c)(3) and (c)(4) of the Act. As such, the plan cannot be imposed by the Commission.

Structural separation of BOC local operation not only exceeds the provisions of the Act, it is flatly inconsistent with the basic structure of the Act. The Act eliminated barriers to local competition through the interconnection obligation of Sections 251(a), (b) and (c) and through the competitive checklist conditions for BOC long distance entry in Section 271(c)(2)(B). All of these requirements are non-structural in nature, such as interconnection with competing networks, unbundling of network elements and resale of retail telecommunications services, and permit the

[5] See, LCI Petition at ft. not. 21 (exceeds Section 271) and p. 26 (Section 251(c). Likewise, Senators Dewine and Kohl have drafted proposed legislation that would in effect enact the LCI proposal. Their proposal, is a voluntary option that would allow the BOCs to bypass the Section 271 review process if they completely divest their local network facilities. The Senators have emphasized the bill is still in the "discussion draft" phase and that they are by no means certain that this method will prove to be worthwhile. This, of course, would not be necessary if the Senators believed that the Commission has the authority under the Act to simply approve the LCI proposal. Thus, it appears that at least two Senators believe that legislation is needed to implement the fundamental departure from the Act proposed by LCI.

BOCs to organize their local operations to meet the demands of their customers. This was not an oversight by Congress. It is clear from a reading of Section 272 of the Act that Congress knew how to impose structural separation when it intended to do so. Since Congress did not require structural separation at the local level as a tool to spur local competition, neither should the Commission.

In fact, Sections 251(c)(4) and 252(d)(3) of the Act demonstrate that Congress could not have intended to require divestiture of BOC retail operations. These sections require that an incumbent LEC including the BOCs, offer for resale, all of its retail services at rates that reflect its retail rates minus the costs it avoids in offering the service at wholesale. However, if (as required by the LCI plan) the BOCs' wholesale operations do not offer any service for retail, they cannot offer any such service for resale.[6] Moreover, even if the BOC wholesale subsidiary could offer services at resale, what rate would it charge, since it has no retail rate. Obviously when Congress drafted the Act, it accepted the fact that BOCs would offer retail and wholesale services from an integrated operation, in fact the resale sections of the Act are built upon that organization. The LCI plan would totally obliterate resale offered by the BOC's at a discount as an option in favor of network elements and interconnection and this is clearly contrary to Congress' intent in passing the Act. In essence, LCI's proposal eliminates the resale option provided by Section 251(c)(4) of the Act.

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[6] Under the plan all retail services will eventually be offered by CLECs and the BOCs retail affiliate (ServeCo) who may have its own obligation to offer its services at resale under Section 251(b)(1) but with no discount. It is clear that ServeCo would not be an incumbent LEC with an obligation to offer its services for resale at a discount under Section 251(c)(4) of the Act. The BOC's ServeCo affiliate would not appear to be an "incumbent LEC, as defined by Section 251(h) because it did not provide telephone exchange service, nor was it a member of the exchange carrier association on the date of the enactment of the Act. Moreover, it is hardly a successor of the BOC's incumbent operations when it has to win every customer, has 40% independent ownership and must operate on a structurally separate basis.

Like the local divestiture proposed by LCI, its requests for steeper resale discounts and that BOCs combine network elements is also in direct conflict the Act, as interpreted by the courts. First, LCI claims that it needs higher resale discounts on BOC telecommunications services it resells. However, the establishment of the discount rate is an issue that was delegated to the states under Section 252(d)(3) of the Act, and over which the Commission does not have jurisdiction.[7] This lack of jurisdiction to establish prices pursuant to Section 252(d) also applies in the context of a Section 271 application.[8]

Second, LCI asserts that it needs pre-existing combinations of unbundled network elements. LCI asks for the so-called "platform", which amounts to pre-existing combinations of network elements that duplicates the BOC's exchange service at cost-based rates. However, the Eighth Circuit's decision in Iowa Utilities Board v. FCC held that Section 251(c) of the Act affirmatively prohibits any requirement that an incumbent LEC, including a BOC, either combine unbundled network elements on behalf of CLECs, or provide CLECs with preassembled combinations of unbundled network elements. LCI's "fast track" proposal however, effectively requires that BOCs combine unbundled network elements for LCI and provide LCI with preassembled combinations of network elements. This violates the 1996 Act and Iowa Utilities Board.

The Eighth Circuit's opinion in Iowa Utilities Board held that Section 251(c)(3) of the Act "unambiguously indicates that requesting carriers will combine the unbundled elements themselves," and cannot "be read to levy a duty on the incumbent LECs to do the actual

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[7] See, Iowa Utilities Board v FCC, 120 F. 3d 753, at 793-800 (8th Cir. 1997).

[8] See, Iowa Utilities Board v FCC, 1998 WL 30655, Writ of Mandamus and Order on Motions for Enforcement of the Mandate, filed January 22, 1998. ("Iowa Mandamus Order").

combining of elements".[9] Given this, the Eighth Circuit vacated the Commission's rules (47 C.F.R. §§ 51.315(c)-(f)) requiring incumbent LECs, including RBOCs, to combine unbundled network elements on behalf of CLECs.[10] Although the United States Supreme Court has granted certiorari on certain aspects of Iowa Utilities Board, the vacatur of Section 51.315(c)-(f) of the Commission's Rules is not one of the issues included in that appeal, and the Eighth Circuit's decision is therefore the final and non-appealable law of the land.

On rehearing, the Eighth Circuit vacated another of the Commission's Rules (47 C.F.E. §51.315(b)), which had required incumbent LECs to provide CLECs with preassembled combinations of network elements. As the Eighth explained, because "Section 251(c)(3) requires an incumbent LEC to provide access to the elements of its network only on an unbundled (as opposed to a combined) basis," the provision "does not permit a new entrant to purchase the incumbent LEC's assembled platform(s) of combined network elements (or any lesser existing combinations of two or more elements) in order to offer competitive telecommunications services."[11] The court added that "[t]o permit such an acquisition of already combined elements at cost based rates for unbundled access would obliterate the careful distinctions Congress has drawn in subsections 251(c)(3) and (4) between access to unbundled network elements. . . and the purchase at wholesale rates of an incumbent's telecommunications retail services for resale." The Eighth Circuit's vacatur of rule 51.315(b) is now final(though it is one of the matters on which the Supreme Court took certiorari). Eighth Circuit's decisions obviously controls LCI's combinations request, and requires that it be denied

B. The Plan Is Contrary To The Commission's Recent Decisions Balancing Efficiency With Effectiveness And Rejecting Structural Separation.

[9] Iowa Utilities Board, 120 F.3d at 813.
[10] *Id.*
[11] *Id.* at 820.

The wholesale/retail structural separation advocated by LCI is also contrary to the Commission's orders released in recent dockets examining competitive safeguards in market segments where a LEC is both a supplier and a retail competitor. In each case, the Commission has rejected structural separation, or eased an existing structural separation requirement, as unduly stringent, inefficient and because its price to consumers exceeded its benefit.

For example, applying its traditional cost/benefit analysis to the provision of cellular service by the BOCs (which was previously permitted only under a strict regime of full structural separation), the Commission decided to adopt requirements that are "much less stringent" than its former structural separation requirements.[12] For instance, the new rules impose no requirement of separate officers or employees; separate operating, marketing, installation and maintenance personnel; ownership of wireline local exchange facilities; or use of separate computer and transmission facilities. Indeed, with the exception of a separate corporate entity and associated accounting and cost allocation safeguards, the Commission has eliminated virtually all its previous structural separation requirements from BOC cellular operations.[13]

Applying similar reasoning, the Commission lifted is previous structural separation requirements applicable to BOC provision of enhanced services and customer premises equipment (CPE). This decision was expressly based on a finding that "the costs from the structural

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[12] In the Matter of Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services, WT Docket No. 96-162, Report and Order (rel. October 3, 1997), at ¶¶ 64-5. Among the reasons cited by the Commission was the fact that "structural separation entails costs to the carriers, in the form of lost efficiencies of scope and added costs of establishing separate facilities, operations, and personnel, as well as lost opportunities for customers to obtain integrated and innovative service packages." 11 FCC Rcd. 16639, 16659-60, ¶38 (1996). See also 89 FCC 2d, at 77-80 (1982).

[13] The Commission deleted Section 22.903 in its entirety with the exception of the CPNI rule. Ibid., at p. 64. That single surviving separation requirement was retained until it too was deleted in the CPNI proceeding. In the Matter of Telecommunications Carrier Use of Customer Proprietary Network Information and Other Customer Information, CC Docket 96-115, Second Report and Order, (FCC 98-27), released February 26, 1998.

separation requirements in lost innovation and inefficiency render these requirements far less desirable than nonstructural safeguards."[14] The Commission's finding was recently affirmed by the Commission, which noted from its prior finding, "based on its experience, that the introduction of new information services by the BOCs was slowed or prevented altogether by structural separation, thus denying the public the benefits of innovation."[15]

III. LCI'S PROPOSAL IS OPERATIONALLY AND ECONOMICALLY INEFFICIENT AND WILL DEGRADE SERVICE.

Even if the Commission had the authority to approve the LCI proposal, it should not because the plan could impose significant inefficiencies and costs on users of the BOCs' retail and wholesale services. The result will be higher rates, degraded service, and reduced innovation and network investment. The plan can clearly not only harm the BOC's retail users, but it can also harm users of its wholesale services and thereby distort the natural development of efficient competition.

A. The Proposal Is Bad For Retail And Wholesale Customers.

Perhaps the most compelling reason to reject the petition is, that if adopted, it can be bad for customers, both retail and wholesale. Forced structural separation can reduce customer choice, degrade service, and create customer confusion. To the extent that an BOC's costs are thereby increased and its efficiency impaired, the quality of its services are eroded. Those natural results of the LCI plan can also adversely impact users of the BOCs' retail and wholesale services, particularly resellers.

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[14] In the Matter of Amendment of Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry), CC Docket No. 85-229, Report and Order, 104 FCC 2d 958, 1012, ¶ 99 (1986).

[15] In the Matter of Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services, CC Docket Nos. 95-20, 98-10, Further Notice of Proposed Rulemaking (rel. January 30, 1998), at ¶ 47.

Examples of the potential adverse retail customer impact of LCI's proposal for retail customer abound. For instance, under the plan, the BOCs' NetCo could not add new services and features to their product lines, and customers would only be able to order such new features/services from the BOCs' ServeCo separate subsidiaries. For customers wishing to order a new retail feature, this arrangement is not only confusing, but cumbersome. Customers would not know who to talk to about their service. Worse yet, they would be under the impression that the BOC is unattentive, and only offering obsolete low quality service. On top of that, even after customers obtain a new feature, they will receive unwanted multiple bills for local service.

Another example of the likely adverse impact of LCI's proposal on end users is that the quality of a BOC's service is intentionally designed to decline over time. LCI proposes that the BOC's NetCo, with whom a customer may have dealt for many years and which would continue to serve existing customers during a transition period, could not upgrade or enhance its services. The result would be a degradation of service over time relative to services offered by NetCo's competitors, which is intended to drive customers away from the BOCs to LCI, or the CLECs.

LCI's balloting/allocation proposal (which would force NetCo's retail customers to those another carrier) is yet another example of its utter disregard for customer service. It is no secret that customers do not like balloting, and find it confusing and invasive. Customers do not want to be forced to make an election or change until they are ready to do so. Looked at from the customers prospective, LCI's allocation proposal is nothing more than a legalized form of slamming.[16] Ameritech believes that, anything short of free customer choice, is slamming, and should be condemned not condoned.

Not surprising, impairment of the BOCs' efficiency and inflation of its costs, will also adversely impact wholesale customers. The separation of the BOCs' network from its retail operations would sever from the BOC's wholesale operations product lines, retail customer support systems and billing systems that are available to resellers today and are used by them to order, provision, maintain and service their accounts. Moreover, under LCI's plan, the retail services offered by the BOCs' NetCo (and thereby available for resale) are frozen and, therefore, new products and features would not be available to resellers. Thus, the current integration of the BOCs' retail, and wholesale operations is vital for requesting carriers.

The LCI plan would also inflate the costs of servicing wholesale customers. Since the structural separation proposed by LCI will split many existing functions between the RBOCs' retail and network operations, it will require duplication of facilities, personnel, systems and structures in both organizations. The effect will be to greatly increase the cost of providing both retail and wholesale services. These increases in costs will produce either price increases or losses to the BOCs that will ultimately impair their ability to serve.

B. LCI's Proposal Is Operationally Inefficient And Economically Unsound.

In addition to customer service problems, LCI's proposal, if implemented, would create significant operational inefficiencies. In fact, operational inefficiency is one of the key reasons why the Commission has repeatedly rejected or relaxed structural separation. Moreover, the LCI

[16] As such it is not only bad policy, but would force BOCs to violate at least the intent, if not the letter, of Section 258 of the Act, which prohibits carriers from "submitting or executing" change orders that do not meet the

proposal is not financially viable and is conficatory, since virtually all of the NetCo's services would be interconnection and network elements provided at forward-looking incremental costs.

Under LCI's proposal, there would be a significant duplication of operations between a BOC's NetCo and ServeCo subsidiaries. This duplication would be especially inefficient here, since ServeCo would be forced to begin with zero customers, and at some point, the BOC's NetCo will have all its retail customers taken from it. Also, during this transition period, the BOC would have to run duplicate retail operations to provide the same services to the same customer groups. After that date, ServeCo would still not be able to enjoy any of the operational and administrative efficiencies and scope of operation resulting from integration NetCo.

For instance, under the LCI proposal most of the existing assets of the BOC could be retained by NetCo. Thus, the BOC would be required to duplicate its existing operations to serve a declining base of customers through two channels. Along the same lines, the NetCo also could not share employees, again requiring duplicate employees performing the same or overlapping functions.

By raising the costs of the BOC's wholesale and retail operations, prices for both product lines must rise harming both end users and users of the BOC's wholesale services. Moreover, the BOC will be placed at a significant competitive disadvantage vis-a-vis its integrated competitors, such as WorldCom/MCI, or AT&T/Teleport. The recent merger of LCI itself with Qwest, MCI - WorldCom, and AT&T - Teleport only serves to underscore the point that consolidation, not divestiture is the trend within the telecommunications industry. According to Joseph P. Nacclis, Qwest President and Chief, Executive Officer: "we will see significant combination benefits in the areas of network facilities costs, sales and marketing, network engineering and operations

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Commission's "verification procedures". Since changes that result from allocation and not customer choice cannot information technology, and administrative costs". Cost reductions in the first year of combined operation has estimated to the be $300 million; there is also a projected reduction in capital expenditures of $80 million in 1999 alone.[17]

The CLECs in these combinations (MFS, Brooks and Teleport) were relatively small, lesser known entities with little marketing clout in the local exchange business. By combining with large, well-known, brand-name carriers like MCI and AT&T, however, the effectiveness of these carriers in marketing and selling local services will increase dramatically. The prices paid for the acquired companies in fact reflect the expectation of significant inroads into the local exchange and exchange access business.

Also, under current pricing methodologies for unbundled network elements, the BOC's cannot earn a fair competitive return[18] and their ability and incentive to fund innovations and network investment will likewise be impaired and eliminated.

For all these reasons, the proposal makes no business or economic sense and would never be voluntarily adopted. This is underscored by the fact that no BOC joined in the filing, or is implementing the plan. In Attachment A, Ameritech discusses in more detail the economic and financial reasons why the LCI proposal should be rejected. In summary, the proposal will impose additional costs on consumers in the form of inefficiency and degraded service. In essence, it would deny to BOC customers the potential benefits of integration. Second, it can stifle innovation and investment. Third, it will distort the development of efficient competition. Fourth,

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be verified as required by this reaction Ameritech submits they qualify as slamming.

[17] "Qwest Moves to Become Retail Force with $14.4B Offer for LCI" Telecommunications Reports, March 16, 1998; downloaded from Dow Jones Interactive.

[18] In deed based on the forward-looking incremental cost methodologies that would apply to the network company's wholesale products, that company would have a negative net income at current pricing levels.

since the BOC's NetCo will only sell services at forward-looking incremental costs, it operations will not be financially viable.

IV. LCI'S PROPOSAL IS FLAWED AND WILL NOT ACHIEVE ITS STATED OBJECTIVES.

Apart from the legal and policy shortcomings discussed above, LCI's proposal is seriously flawed because it does not, and will not, achieve its stated objectives. In its petition, LCI identifies a number of concerns it seeks to resolve. These concerns include acceleration of BOC entry into long distance; acceleration of local competition; and the availability of efficient and effective operations support systems ("OSS"). However, LCI's proposal cannot resolve any of these alleged concerns.

A. LCI's Proposal Would Complicate And Delay BOC Long Distance Entry For At Least Two to Four Years.

LCI claims that BOC interLATA entry also "could be accelerated safely" by adoption of the petition and that the proposal "would simplify" the existing process of 271 entry.[19] Both contentions are false. The proposal would create an additional significant barrier to full long distance competition, without eliminating any of the existing requirements. If adopted, the proposal would thereby further complicate and delay an already complex and laborious process.

The proposal is flawed from a procedural perspective because it cannot eliminate any of the existing competitive checklist requirements. The competitive checklist for BOC long distance entry is detailed in Section 271(c)(2)(B) of the Act. The Commission is not permitted to either "limit or add" to these conditions.[20] Moreover, under the Act the BOCs have the burden of proving that they have met each competitive checklist item. Thus, the Commission cannot swap

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[19] See, LCI Petition at page 13.
[20] See, Section 271(d)(4).

structural separation for proof that an RBOC has met each and every one of the competitive checklist requirements.

The mandatory nature of each checklist item explains, at least in part, why LCI proposed that the plan allegedly be "voluntary," and that its adoption only create a "rebuttable presumption" of compliance with the checklist.[21] However, this presumption does not relieve a BOC of its duty to prove that it met all the checklist requirements, nor does it prevent any party from objecting to the lack of evidence on any item, or otherwise claiming that the BOC has failed to met it.

LCI itself admits that even under its proposal "[t]he RBOC also must actually be providing or generally offering each checklist item in order to meet Section 271"[22] Although, LCI claims "the rebuttable presumption should substantially expedite the process by which an RBOC meets that burden" it is clear that adding additional and complicated structural conditions does not simplify the process.

In fact, the divestiture required by the LCI plan will take a significant time to implement. For the sake of comparison, the partial "divestiture" proposed by LCI is far more complex than the 1984 Bell System Divestiture. The splitting of AT&T's Long Lines, Western Electric and Bell Labs from the BOCs involved the separation of units of AT&T that were for the most part operated as separate units. By contrast, the alleged partial "divestiture" of the BOC's local wholesale and retail operations proposed by LCI involves the complete separation of operations that have been integrated for many years and that share countless common facilities and systems.

Such a divestiture of integrated operations is massive in its scope and , at a minimum, will take at least 18 to 36 months just to adequately plan and implement. Ameritech estimates that

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[21] See, LCI Petition at 24.
[22] *Id.*

adoption of LCI's plan would delay long distance entry by at least 2 to 4 years. For example, Ameritech projects that it will take 4 to 6 months for the Commission to complete this proceeding; it will take 18 to 36 months to plan and implement the divestiture, and another 4 to 6 months to obtain regulatory verification by the Commission and/or state regulators that the plan is fully implemented. On top of this timetable, state regulatory proceedings will be required in at lease some states to approve this separation. The total is optimistically 2 to 4 years before Ameritech would again be ready to file for long distance relief under the LCI plan. This is considerably longer than Ameritech estimates it will take for it to achieve long distance relief under the current process required by Congress.

B. The Plan Will Not Remedy The "Alleged" OSS Problems LCI Identifies.

Adoption of the LCI proposal will not address standards and interfaces for OSS. These are industry-wide issues some of which are the subject of another filing made by LCI and others. None of these industry or Commission proceedings involve structural separation. Rather, OSS interface and measurement issues are best resolved by carrier negotiations, industry standards groups and in other pending proceedings that are considering these OSS issues.

This is another case of an interexchange carrier blaming the BOCs for its own failings. Ameritech is doing its part and is providing OSS that meets the Commission's requirements. For instance, Ameritech has aggressively implemented electronic interfaces to its OSS that are being successfully used by most users of its OSS. In fact, since the beginning of the year, almost all unbundled loop orders and approximately 85% of all resale orders received are electronically transmitted to Ameritech's OSS. Yet, during the same period, almost 85% of LCI's orders are still being manually sent via facsimile and LCI is transmitting only 15% of its orders electronically.

The simple solution is for LCI to use the OSS capabilities that already exist and that are being used by other carriers, rather than seek to destroy Ameritech's integrated operations.

VI. CONCLUSION.

The LCI proposal should be dismissed. LCI's plan cannot accomplish its goals, and is contrary to the Act. Moreover, LCI's proposal is a poor policy choice because it introduces significant inefficiencies that would inflate costs, impair quality and stifle innovation and network investment to the detriment of users of the BOCs' retail and wholesale services. Finally, LCI's proposal fails to meet its stated objectives and delays for at least an additional two to four years the benefits of additional long distance competition promised to consumers by the Act. LCI's plan should be understood for what it is, yet another attempt to game the regulatory process in order to delay long distance competition.

Respectfully submitted,

Larry A. Peck

John T. Lenahan
Larry A. Peck
Counsel for Ameritech
Room 4H86
2000 West Ameritech Center Drive
Hoffman Estates, IL 60196-1025
(847) 248-6074

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Attachment A to Ameritech's Opposition
The LCI Petition Fails on Economic Grounds

This Attachment discusses the economic competitive and financial impacts of the LCI proposal. It concludes that if the LCI proposal was adopted, it would fail from an economic and financial perspective. It could impose unnecessary costs on consumers, stifle innovation and investment, and distort the development of efficient competition.

Ameritech is not saying that in all cases integration of wholesale and retail function is the most efficient and effective structural organization. Rather, what it is saying is that each firm should be free to decide what structure is optional for it, and should be allowed to utilize that structure without the distortions introduced by plans, such as the LCI proposal, which require a specific structure regardless of its impact on efficiency and customer service.

A. THE LCI FAST TRACK PROPOSAL COULD IMPOSE UNWARRANTED COSTS ON CONSUMERS AND COMPETITORS ALIKE.

Firms organize in ways that allow them to operate at the least cost to provide a designated level and quality of service. One possible strategy to achieve that objective is to combine functions required to provide and service a product so they can share administrative and overhead functions. The LCI Petition would interfere with this natural process by requiring separation of these function on policy grounds. Enforced structural separation thereby can increase these administrative expenses and overheads, since they must be duplicated in both subsidiaries. In cases where these increased costs are not offset by other factors, the result is a loss of efficiency and cost effectiveness. Some of the inefficiencies resulting from structural separation are set out in the LCI Petition itself. Examples include separate personnel equipment, buildings, services, other resources, trade names and service marks.[1]

Moreover, these inefficiencies, when combined with having to price virtually all its services (interconnection and network elements) at the Commission's TELRIC methodology, which has been adopted throughout the Ameritech region, would create a non-viable wholesale entity. Even if NetCo was made financially viable through a deviance from TELRIC pricing, it should not be done in such a way so it places ServeCo at a competitive disadvantage versus other CLECs.

The industry trend toward integration is demonstrated by the recent mergers of WorldCom with MFS and Brooks and then MCI and the recently announced AT&T-Teleport Qwest and LCI mergers. This trend reflects the underlying efficiencies of combining the different stages of the production of telecommunications services. Yet, the LCI proposal requires just the opposite result, disintegration where efficiency considerations appear to dictate otherwise. While this may be helpful to some BOC competitors, introducing inefficiency will not benefit consumers of either the BOC or the CLECs.

B. LCI'S PROPOSAL COULD STIFLE BOC INNOVATION AND INVESTMENT.

Harmonization of incentives between different operational layers through integration can lead to more innovation and dynamic efficiency. Investment and innovation occur through a balancing of investment risk against potential return. The integration of marketing and production under Ameritech's current structure helps to reduce the uncertainty of returns on new investments in one area by spreading their use across many. Thus, several potential uses of a new innovation may justify the investment to provide it. The effect is to encourage and facilitate the deployment

[1] See, LCI Petition at 17, 21.

of new technologies and upgrading of the network. It increases the likelihood of successful innovation, while also providing a means of more quickly achieve legitimate returns on such innovation.

Under LCI's onerous separate subsidiary regime, integrated implementation of new technologies is not assured, since an investment by NetCo may not be matched by complementary investments in the separate ServeCo unit and by CLECs. For example, the NetCo could implement an innovation in the network that would make a new feature widely available. But if ServeCo and CLECs do not invest in training and marketing to sell the new feature, the returns from this innovation may never be realized.

The interexchange business provides a case study of the success of less restrictive policies. Even when AT&T held a virtual monopoly of interexchange services, its obligations to serve competitors were much less stringent than what has already been imposed on the BOCs. AT&T was required to resell its services at its tariffed retail rates (not at artificially conceived wholesale rates) and was never required to provide its wholesale and retail services through separate subsidiaries. This approach allowed AT&T to develop innovative services to meet customer needs, such as Software Designed Network Services, while at the same time allowing resale competitors the opportunity to benefit from AT&T's innovation. While there have been disputes over the details of offerings of AT&T services for resale, there is little doubt that a vibrant and viable interexchange resale business developed in part from these policies.

By discouraging systemic innovation, LCI's proposal could harm the final customers of both Ameritech and even carriers that use Ameritech's unbundled network elements or resold retail services. This is because the innovation that could have been obtained by a closer